



Who is protecting our environment for present and future generations?



Undertaking Environmental Compliance and Enforcement



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA





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Can you and your family enjoy time in wilderness areas or parks? Do you have fresh air to breathe? Can you find and afford healthy food? Do your children have safe spaces in which to play? Do you have clean water to drink? If the answer to any of these questions is NO, it could be as a result of ENVIRONMENTAL CRIME.

1 WHY PROTECT THE ENVIRONMENT?

The environment renders various natural services that provide us humans with natural resources which are critical for our survival. As technologically advanced as we might be, we will never be able to replicate its natural processes or resources. Therefore our health and well-being depends entirely on the integrity of our environment. By protecting our environment we are not only saving animals and plants, but we are ensuring the survival of our species through conservation and sustainable practices.

The environment can be compared to the foundation of a building - as you remove critical parts of the foundation, the building weakens to a point where eventually the entire structure will collapse. Similarly, each plant and animal has a specific role in the environment, and as we destroy and remove them, we interfere with the natural processes that form the backbone of the ecosystem, eventually causing it to deteriorate beyond repair.

The Constitution guarantees every person the right to an environment that is not harmful to their health and well-being. It also says that government must act reasonably in order to protect the environment by preventing pollution, promoting conservation and sustainable development, while building the economy and society.

2 WHAT IS THERE TO PROTECT?

Our environment extends far beyond our everyday surroundings, it comprises of every natural aspect of our beautiful country. South Africa's rivers and wetlands, mountains and plains, estuaries and oceans, magnificent coastline and landscapes all contain an exceptionally rich and varied array of life forms. In fact, our country ranks as the 3rd most biologically diverse country in the world, with South Africa having its very own Cape Floral Kingdom - one of only 6 Floral Kingdoms in worldwide.

South Africa also boasts unique and exceptionally rich coastal waters with the majority of the country bordered by two oceans, the Indian and Atlantic Oceans. This makes South Africa's coastline and marine ecosystems one of the most diverse in the world; and it's ocean hosts about 83% of all known marine fish families.



The Environmental Management Inspectors “..... have an onerous constitutional mandate to promote conservation and protect the environment. They execute this dutyfor the benefit of present and future generations by inter alia preventing pollution and ecological degradation (see section 24 of the Constitution)”

(Mosunkutu N.O & Another v Aquarella Investment 83 (Pty) Ltd & Others)

3 WHY IS IT IMPORTANT TO PROSECUTE ENVIRONMENTAL CRIMINALS?

Why should our government spend valuable resources on investigating environmental crime and prosecuting environmental criminals?

Environmental crime has serious social and economic impacts on the daily lives of our people. For example, the pollution of groundwater can cause cancer in adults and children, while the illegal killing of wildlife can cause the eventual extinction of a particular species, resulting in a loss of tourism income for the country.

Environmental crime has the potential, amongst others, to:

- harm our health and the health of our children by causing or contributing to diseases like cancer and asthma
- contaminate our soil and compromise the growth of our crops, our ground water and the health of livestock
- destroy our natural resources, habitats and biodiversity by killing or wiping out wilderness areas and rare species
- compromise our natural heritage, and the ecological integrity of the planet
- pollute our oceans, making them unsafe to enjoy
- contribute to general criminal activity, and all its negative social consequences.

The health effects of air pollution:

Air pollution is the contamination of the air by harmful gasses and particulates (dust) at concentrations that are higher than natural background levels. Different groups of individuals are affected by air pollution in different ways depending on their level of sensitivity. Continual exposure to air pollution affects the lungs of growing children and may aggravate or complicate medical conditions in the elderly.

(DEAT, Publications Series B: Book 5: Impacts of Air Pollution, 1)



"Each one of us is intimately attached to the soil of this beautiful country. Each time one of us touches the soil of this land, we feel a sense of personal renewal."

- Former President Nelson Mandela, Inauguration Speech, 1994.

4 WHO COMMITS ENVIRONMENTAL CRIMES?

Environmental crimes are usually the result of calculated business decisions **either to make money or save money**. A very small proportion of environmental crimes are committed out of desperation or need. The greed of environmental criminals is encouraged by the short sighted perception that **abusing or harming the environment** does not matter.

Offenders are often middle-class and educated. Their crimes are viewed as "white collar" and therefore not important or life-threatening. However, many of these crimes are undertaken by organised syndicates; and may consequently not only be life-threatening, but also cost our country billions of rand each year.

A US government study concluded that environmental crime syndicates make between \$22-31 billion US per year from their illegal activities. (**US Government Working Group International Crime Threat assessment, 2000** - www.fas.org/irp/threat/pub4527chap2.html)

5 HOW WILL I RECOGNISE AN ENVIRONMENTAL CRIME?

Not all activities that impact on the environment are criminal. However, if the activity has or may have a **significant negative effect on human health or wellbeing** or on **natural or managed ecosystems**, it could be an environmental crime.

The suite of environmental legislation contains a number of provisions that criminalise certain types of behaviour with corresponding penalties. These types of behaviour typically pose a risk to the environment; and include activities that are either completely prohibited; or are restricted and therefore require a permit or authorisation to be undertaken.

The table below sets out just a few examples of criminal offences in terms of national environmental legislation. Contraventions of provincial and municipal legislation are often also environmental crimes.



Crime

Legislation

Penalty



Operating a waste disposal site without a waste management licence

Section 67 read with 20 of the National Environmental Management: Waste Act, 2008;

List of Waste Management Actives that have or are likely to have a detrimental effect on the environment - GN 921

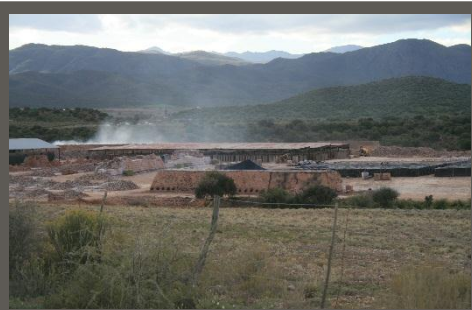
R10million and/or imprisonment of 10 years;



Emitting an offensive odour from an activity or premises

Section 51 read with 35(2) of the National Environmental Management: Air Quality Act, 2004

R5million and/or imprisonment of 5 years



Commencement of a property development in sensitive wetland

Section 49A read with 24F of the National Environmental Management Act, 1998; &

Activity 12 of Listing Notice 1: List of Activities and Competent Authorities identified, 2014

R10million and/or 10 years imprisonment



Penalty

Legislation

Crime

R10million or three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater and/or imprisonment of 10 years

Section 101 read with 57 of the National Environmental Management: Biodiversity Act, 2004;

Regulation 73 of the Threatened and Protected Species Regulation GNR 152, 2007



Hunting or gathering a listed threatened or protected species without a permit

R5million and/or imprisonment of 5 years

Section 89 read with 45 of the National Environmental Management: Protected Areas Act, 2003



Entering; residing or performing a restricted activity in a special nature reserve

Fine of between R500 000 per vehicle per offence; and/or imprisonment of 2 years.

Regulation 13 read with 2 of the Control of Use of Vehicles in the Coastal Area Regulations - GNR 496, 2014. Published under the National Environmental Management: Integrated Coastal Management Act, 24 of 2008



Driving in the coastal area without a permit



6 CONSEQUENCES OF CONVICTIONS FOR ENVIRONMENTAL CRIMES

In addition to **jail terms and fines**, conviction in respect of an environmental crime may result in a **civil judgment** against the offender for:

- any loss or damage caused, including the cost of rehabilitation of the environment;
- the money made by the offender through the commission of the environmental crime
- the cost of investigation and prosecution

Employers whose employees commit environmental crimes, and directors of companies that commit environmental crimes, can also be criminally charged for that crime.

Cancellation of and disqualification for permits: A person who has been convicted of an environmental crime may have his/her permit withdrawn, and be disqualified for up to five years from obtaining another permit.

Forfeiture of items used to commit environmental crimes: Any item, including vehicles, vessels and aircraft, used to commit an environmental crime may be forfeited to the State.

All of these legal mechanisms are in place to ensure that the polluter or poacher pays for the crime that they have committed.

Did you know?

If you assist in bringing an environmental criminal to justice, a court imposing a fine for an environmental crime may order that an amount of up to a quarter of the fine has to be paid to the person whose evidence led to the conviction. (Section 34B of the National Environmental Management Act, 1998)





7 WHO INVESTIGATES ENVIRONMENTAL CRIME?

You may have heard of the “Green Scorpions” in the news. These are, in fact, **Environmental Management Inspectors (EMIs)** - officials from various national, provincial and municipal government departments designated by the Minister or MEC to monitor compliance with and enforce environmental legislation.

The National Environmental Management Act, 107 of 1998 (NEMA) confers a wide range of powers on EMIs to **investigate environmental crimes**, including the questioning of witnesses, the copying of documents and the taking of samples, photographs and audio-visual recordings. In certain circumstances, EMIs may conduct search and seizure operations and arrest an environmental criminal. However, not all EMIs are criminal investigators; some are empowered to conduct routine **inspections**, while others undertake **administrative enforcement** such as the issuing of administrative enforcement notices and directives.

How will I recognize an EMI?



EMIs can be identified by the **EMI logo**, which has been designed to represent a shield of protection and enforcement, and to highlight the three key areas of enforcement - marine and coastal (the “blue” issues), biodiversity and conservation (the “green” issues), and urban development, pollution and waste (the “brown” issues).

EMIs are also issued with standard EMI identity cards.

This national network of EMIs breaks through the traditional separation between the **different aspects of the environment**. Included in the EMI network are park rangers, conservation and coastal enforcement officers, air quality, pollution and waste enforcement officials and officials who monitor certain developments. These EMIs work hand in hand with members of the **South African Police Service** and the **National Prosecuting Authority** to ensure that environmental criminals are brought to book.



8 WHAT THE EMI LOGO REPRESENTS

“Brown”

Represents issues relating to air, waste and pollution, EIA, emergency situations, incidents and developments



“Blue”

Represents the management and protection of the coastal environment

“Green”

Represents issues related to the protection and sustainable utilization of biodiversity, biosecurity and the management of protected areas





9 WHERE WILL I FIND AN EMI?

The Constitution of South Africa allocates the responsibility to protect the environment to all three spheres of government. In effect, this means that you will find EMIs stationed at:

National institutions: such as South African National Parks, Isimangaliso Wetland Park Authority and the National Department of Environmental Affairs. **Provincial:** environmental authorities and parks boards. **Local: authorities,** including both district and local municipalities

You will also find compliance and enforcement officials with similar powers employed at the Departments of Water and Sanitation and Mineral Resources.



10 WHAT CAN I DO TO HELP STOP ENVIRONMENTAL CRIME?

Here are a few things that you can do to assist:

- **Familiarise** yourself with your environmental rights and responsibilities;
- Tell your **friends and family** about environmental crime and why it should be stopped;
- If you suspect that an environmental crime is taking place, **report it** directly to relevant authorities (such the relevant national, provincial or local government department or the South African Police Service) or call the national **Environmental Crimes and Incidents Hotline on 0800 205 205/e-mail: office@thehotline.co.za**, who will refer the matter to the relevant authority on your behalf);
- Be proactive and **become an Environmental Management Inspector**

How do I become an Environmental Management Inspector?

If you want to become an Environmental Management Inspector, you must first complete a basic training course that has been approved by the Director-General of the Department of Environmental Affairs. This course is only offered by the national Department; as well as other formally approved organisations and is presented to persons that are appointed in government departments to execute a compliance and enforcement function.

IT'S YOUR EARTH, PROTECT IT!

**REPORT CRIMES
AGAINST THE ENVIRONMENT**

**24-HOUR HOTLINE:
0800 205 005**

OR E-MAIL: environment@tip-off.com



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